

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

DAVID CHARLES WERTENBERGER
TX-1322530-R

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§ DOCKETED COMPLAINT NO. 08-240
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AGREED FINAL ORDER

On this the 13 day of January, 2012 the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of David Charles Wertenberger (Respondent).

In order to conclude this matter David Charles Wertenberger neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent, David Charles Wertenberger, is a state certified residential real estate appraiser who currently holds and held certification number TX-1322530-R during all times material to the above-noted complaint cases.
2. Respondent appraised 1737 Alhambra Street, Dallas, Dallas County, Texas 75023 ("the Alhambra property") on or about March 28th, 2005.
3. Respondent appraised 6429 Wakefield Road, North Richland Hills, Tarrant County, Texas ("the Wakefield property") on or about December 29th, 2006.
4. Respondent appraised 2033 E. Branch Hollow Drive, Carrollton, Denton County, Texas ("the Branch Hollow property") on or about December 14th, 2006.
5. On or about August 25th, 2008, Jeff Strawmyer, filed a staff-initiated complaint with the Board based on allegations that the Respondent produced appraisal reports that contained violations of the Uniform Standards of Professional Appraisal Practice ("USPAP").
6. On or about September 9th, 2008, the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint.

7. Respondent's response to the complaint was ultimately received, but only after multiple notices were sent to him and the matter was scheduled for a hearing at the State Office of Administrative Hearings. Just prior to the hearing commencing, Respondent finally responded to the complaint.
8. Respondent committed the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Alhambra property:
 - a) Respondent failed to comply with the record-keeping provisions of the USPAP Ethics Rule;
 - b) Respondent failed to identify and report the improvement(s) description adequately;
 - c) Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
 - d) Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate and market area trends;
 - e) Respondent did not provide a summary of his basis and rationale for his determination of the property's highest and best use;
 - f) Respondent failed to collect, verify, analyze and reconcile accrued depreciations and comparable sales data adequately;
 - g) Respondent failed to employ recognized methods and techniques in the cost approach and sales comparison approach;
 - h) Respondent failed to analyze all agreements of sale, options or listings of the subject property current as of the effective date of the appraisal and did not reconcile the quality and quantity of the data within the approaches used, and the applicability or suitability of the approaches; and,
 - i) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.
9. Respondent committed the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Wakefield property:
 - a) Respondent failed to comply with the record-keeping provisions of the USPAP Ethics Rule and did not comply with the Supplemental Standards Rule;

- b) Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;
 - c) Respondent did not provide a summary of his basis and rationale for his determination of the property's highest and best use;
 - d) Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate and market area trends;
 - e) Respondent failed to use an appropriate method or technique to develop an opinion of site value and did not provide support for his determination;
 - j) Respondent failed to collect, verify, analyze and reconcile accrued depreciations, and comparable sales data adequately;
 - k) Respondent failed to employ recognized methods and techniques in the cost approach and sales comparison approach;
 - l) Respondent failed to analyze all agreements of sale, options or listings of the subject property current as of the effective date of the appraisal and did not reconcile the quality and quantity of the data within the approaches used, and the applicability or suitability of the approaches; and,
 - m) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.
10. Respondent committed the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Branch Hollow property:
- a) Respondent failed to comply with the record-keeping provisions of the USPAP Ethics Rule and did not comply with the Supplemental Standards Rule;
 - b) Respondent failed to identify and report the improvement(s) description adequately;
 - c) Respondent failed to consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;

- d) Respondent did not provide a summary of his basis and rationale for his determination of the property's highest and best use;
 - e) Respondent failed to use an appropriate method or technique to develop an opinion of site value and did not provide support for his determination;
 - f) Respondent failed to collect, verify, analyze and reconcile accrued depreciations, and comparable sales data adequately;
 - g) Respondent failed to employ recognized methods and techniques in the cost approach and sales comparison approach;
 - h) Respondent failed to analyze all agreements of sale, options or listings of the subject property current as of the effective date of the appraisal, did not analyze all sales of the subject within three years prior to the effective date of the appraisal;
 - i) Respondent failed to reconcile the quality and quantity of the data within the approaches used, and the applicability or suitability of the approaches; and,
 - j) Respondent's report contains substantial errors of commission or omission as detailed above which resulted in a misleading appraisal report for the property.
11. Respondent made material misrepresentations and omitted material facts in his appraisal report for both of the properties as detailed above.

CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions); USPAP Supplemental Standards Rule; USPAP Standards: 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(iv) & 2-2(b)(viii); 1-2(e)(iv) & 2-2(b)(ix); 1-3(a) & 2-2(b)(viii); 1-3(a) & 2-2(b)(ix); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(iii) & 2-2(b)(viii); 1-4(b)(iii) & 2-2(b)(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(viii); 1-5(a) & 2-2(b)(ix); 1-5(b) & 2-2(b)(viii); 1-6(a) & (b) and 2-2(b)(viii); 1-6(a) & (b) and 2-2(b)(ix); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).

3. Respondent violated 22 TEX. ADMIN. CODE §§153.20(a)(2) and 153.22 by failing to answer inquiries and provide certain documents related to the complaint within 20 days of notice.
4. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations and omitting material facts.

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

- a. Have his certification suspended with that suspension being fully probated for a period of eighteen (18) months, under the following conditions:
 - i. During the probated, eighteen month suspension period Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board. The log shall be submitted every three months and shall detail all real estate appraisal activities he has conducted during the previous three month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of this period of probation within the twenty days of notice of any such request;
 - ii. Respondent shall not sponsor any appraiser trainees during the entire suspension period;
 - iii. Within 6 months of the effective date of this order, Respondent shall complete 10 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board. Upon completion of the requisite mentorship hours, and, within 6 months of the effective date of this order, Respondent shall submit on a form provided by the Board, a signed, notarized affidavit attested by the certified USPAP instructor confirming completion of the mentorship hours;
 - iv. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order;
- b. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- c. Attend and complete a minimum, 7 classroom-hour course in Staying Out of Trouble;
 - i. No examination is required for this course.

d. Respondent shall pay an administrative penalty of \$250.00.

e. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. Unless otherwise noted above, all classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for licensure or certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy the terms of this agreement. Respondent is urged to seek out course offerings well in advance of the deadlines provided by this agreed final order to ensure timely completion of the required courses.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed within **TWENTY DAYS** of the date of this Agreed Final Order.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's license or certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such suspension or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's license or certification is suspended on such a basis, the suspension shall remain in effect for the remainder of the eighteen month suspension period noted above.

Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The

Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

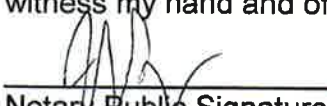
Signed this 9 day of January, 2012


DAVID CHARLES WERTENBERGER

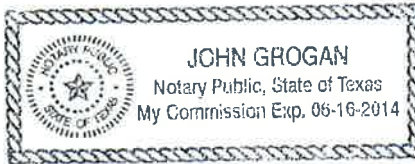


TED WHITMER, ATTORNEY FOR
RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 9 day
of Jan, 2012, by DAVID CHARLES WERTENBERGER, to certify which,
witness my hand and official seal.


Notary Public Signature


Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 12th day of
January, 2012.


Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this 13 day of JAN, 2012.


Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 13 day of JAN, 2012.


Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board